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**File No.** O. Harijans / 47

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**Subject:—**

: Opinions under the Bombay Harijans (Removal of Social Disabilities) Act, 1946.

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# C O N T E N T S.

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We are concerned in this case with theree cremation and burial grounds. The position regarding one of these viz- the Sonapur ground granted in the year 1856 is quite clear, and Harijans are entitled to use it, without invoking the aid of the Bombay Harijan(Removal of Social Disabilities) Act, 1946. The certificate dated the 7th February 1857 shows that the land was granted for the purpose of a cremation ground for Dheds, Mr. M.C Setalvad has rightly pointed out that the certificate embodies the terms of the grant, and usage however long cannot enable the trustees to deviate from the terms of the trust.

2 The Bombay Harijan (Removal of Social ~~Decilities~~ Disabilities) Act, 1946 would in my opinion, apply to this as well as to the other two lands. The relevant provisions of the Act are contained in section 3(b)(1), (vi) and (vii). Under section 3 (b) (i) notwithstnading anything contained in any instrument or any law, ~~xxxxx~~ custom or usage to the contrary, no Harijan shall merely on the ground that he is a Harihan he prevented from having access to any burial or cremation ground which the members of all other castes and classes of Hindus have a right to use orhave access to. The original petition dated 22nd January 18 shows that the land at Soanpur was being used by Hindus and was sougnt to be enclosed by the Hindu Community. In the survey records it was shown as Hindu cremation ground. It was admittedly Government foreshore land; and it must therefore be said to have been ~~xx~~ set apart as a cremation ground for the Hindus The same remarks apply to the other Sonapur land and to the Third ~~xxx~~ i.e. Walkeshwar land. It is difficult to hold that the lands were granted initially only for high caste Hindus The terms of the ~~The terms of the~~ trust may no doubt be gathered from long established usage; but any such usage can be safely disregarded by reason of the introductory part of section 3 quoted above and the express provisins of section 5. There is no dispute that all other.

castes and classes of Hindus have a right to use these cremation grounds. It follows, therefore, that Harijans cannot be debarred from using them under clause (i) of section 3(b). Clause (vi) would also be applicable. The places have been set apart, and it cannot be said that they are so set apart for the use of any particular section or class of Hindus. All Hindus other than Harijans cannot be reasonably described as forming a particular section or class of Hindus. That expression was not intended to provide for such dichotomy of the Hindu community. The use of the word " particular" indicates that smaller but well defined sections or classes were in contemplation, and not the entire Hindu community minus the Harijans. The origin of the grant shows that the places were set apart for Hindus generally; and here too usage would not stand in the way of Harijans. Similarly such usage would not prevent them from using the grounds also under clause (vii) Gifts of burial grounds are charitable (Tudor, p.35); and even if the question is treated as one of a charitable trust only, for the forgoing reasons, it must be held to be a trust created for a benefit of Hindus generally but not for the benefit of any particular section or class thereof. In my opinion therefore, clauses (vi) and (vii) of section 3(b) would be attracted , but more so clause(i) which specially deals with cremation grounds Consequenlty sections 4 and 7 of the Act would come into play and not only is the Committe prohibited from making any discrimination against Harijans, but in preventing Harijans from using the grounds they would expose themselves to a penalty.

3 Apparently this aspect of the case was not present to the mind of the Advocate General (Mr. Daphtary); for his opinion which was given after the Bombay Harijan (Removal of Social Disabilities) Act came into force makes no refereene to it.

Id./ P.M.L. 19/6/47

~~O.C.~~ Remembrancer of Legal Affairs

U.R. to R.D. No. 6403 dated the 20th June 1947

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(6) Canteens run by mills and factories.

Bombay Harijan(Removal of Social Disabilities)Act,1946

The question for consideration is whether "canteens run by mills and factories can be deemed to be "places of public entertainment" within the meaning of clause (e) of section 2 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946.

The expression "place of public entertainment" defined in clause(e) of section 2 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, means any place, whether enclosed or open, to which the public are admitted, and where any kind of food or drink supplied for consumption on the premises for the profit or gain of any person owning or having interest in or managing such place; and includes a refreshment room, eating-house, coffee-house, boarding house, lodging house and hotel. There are two forms of interpretation clause. In one, where the word defined is declared to "mean" so and so, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declred to "include" so and so, the definition is extensive (vide p. 192 of Craies on Statute Law) In defining the expression "place of public entertainment" the first part uses the term "means" and the latter part uses the term "includes". The term public used in the first part of the definition ought, in consonance with the object of the Act, to be construed in this context and mean the public of a specified locality (viz. a mill Moreover, the term "includes" gives an extended meaning to the phrases and in addition to places specified in the first part, it includes within its scope a refreshment-room, eating-house, boarding-house, lodging house or hotel. A canteen in mills and factories however exists caters to the needs of the workmen, and is in the nature of a refreshment-room or eating-house. Consequently, such canteens run by mills and factories though unlicensed

unlicensed
would appear to come within the definition of the expression "places of public entertainment" in clause(e) of section 2 of the Bombay Harijan (Removal of Social Disabilitites) Act, 1946 and Harijan workers would be entitled to have access to them.

Id/ P.M..L. 2[illegible]9/47

~~C.C.~~ Remembrancer of Legal Affairs.

U.O. No. to L. & L.D. No. 9468 dated the 24th Septr, 1947.